

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:) Docket No. CAA-5- 2001-0 09
)
DMI Automotive, Inc.) Proceeding to Assess a
Howell, Michigan) Civil Penalty under
Respondent.) Section 113(d) of the
) Clean Air Act,
) 42 U.S.C. § 7413(d)
)

Administrative Complaint

1. This is an administrative proceeding to assess a civil penalty under Section 113(d) of the Clean Air Act (the Act), 42 U.S.C. § 7413(d).

2. The Complainant is, by lawful delegation, the Director of the Air and Radiation Division, United States Environmental Protection Agency (U.S. EPA), Region 5, Chicago, Illinois.

3. The Respondent is DMI Automotive, Inc., a corporation doing business in Michigan.

Statutory and Regulatory Background

4. Under Section 112 of the Act, the Administrator of U.S. EPA promulgated the National Emission Standards for Hazardous Air Pollutants for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks at 40 C.F.R. § 63 Subpart N ("Chrome NESHAP").

5. The Chrome NESHAP applies to each chromium electroplating or chromium anodizing tank at facilities performing hard chromium electroplating, decorative chromium electroplating, or chromium anodizing.

6. On May 6, 1980, the Administrator of the U.S. EPA approved Michigan Air Pollution Control Commission Rule R336.1201 (Rule 201) (45 Fed. Reg. 29790), as part of the federally enforceable State Implementation Plan for Michigan.

7. Rule 201 sets forth the requirements for permits to install (PTI) under the Air Pollution Act of Michigan.

8. On September 30, 1994, the Michigan Department of Environmental Quality (MDEQ) approved PTI No. 161-94 for Respondent, pursuant to Rule 201. On August 20, 1997, MDEQ approved PTI No. 161-94A for Respondent, pursuant to Rule 201.

9. The Chrome NESHAP (40 C.F.R. § 63 Subpart N) and PTI No. 161-94 and PTI No. 161-94A required Respondent to conduct an initial performance test within 180 days after the facility's initial startup date in June 1996, to prepare an operation and maintenance plan, and to keep records of daily and monthly inspections, daily washdowns and emission tests.

10. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$25,000 per day of violation up to a total of \$200,000 for violations that occurred prior to January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1). The Debt Collections Improvements Act of 1996 increased the statutory maximum penalty to \$27,500 per day of violation up to a total of \$220,000 for violations that occurred on or after January 31, 1997. 31 U.S.C. § 3701 and 40 C.F.R. Part 19. The Administrator of U.S. EPA (the Administrator) may assess a civil penalty of up to \$27,500 per day of violation up

to a total of \$220,000 for violations that occurred on or after January 31, 1997, under Section 113(d)(1) of the Act, 42 U.S.C. § 7413(d)(1), and 40 C.F.R. Part 19.

11. Section 113(d)(1) limits the Administrator's authority to matters where the first alleged date of violation occurred no more than 12 months prior to initiation of the administrative action, except where the Administrator and Attorney General of the United States jointly determine that a matter involving a longer period of violation is appropriate for an administrative penalty action.

12. The Administrator and the Attorney General of the United States, each through their respective delegates, have determined jointly that an administrative penalty action is appropriate for the period of violations alleged in this complaint.

General Allegations

13. Complainant incorporates paragraphs 1 through 12 of this complaint, as if set forth in this paragraph.

14. Respondent is a "person" within the meaning of Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

15. Respondent owns, leases, operates, controls or supervises a facility performing hard chromium electroplating, located at 1200 Durant Drive, Howell, Michigan ("DMI facility") and is an "owner or operator" of the facility as defined at 40 C.F.R. § 63.2.

16. Respondent has a receptacle or container in which hard chromium electroplating occurs ("DMI tank").

17. The DMI tank is a "chromium electroplating or chromium anodizing tank," as defined at 40 C.F.R. § 63.341.

18. The DMI tank is an "affected source," as defined at 40 C.F.R. §§ 63.2, 63.340.

19. The DMI facility is a "stationary source" as defined at 40 C.F.R. § 63.2.

20. The DMI facility is a "major source" or an "area source" as defined at 40 C.F.R. § 63.2.

21. The DMI facility and the DMI tank are subject to the Chrome NESHAP.

22. On March 13, 1997, the Michigan Department of Environmental Quality (MDEQ) conducted an inspection of the DMI facility and the DMI tank.

23. On November 29, 2000, U.S. EPA issued a Finding of Violation to Respondent, pursuant to Section 113(a)(1) of the Act, 42 U.S.C. § 7313(a)(1), notifying Respondent of U.S. EPA's finding that Respondent had violated the Chrome NESHAP, in part, as alleged in this complaint.

Count I

Failure to Timely Conduct an Initial Performance Test

24. Complainant incorporates paragraphs 1 through 23 of this complaint, as if set forth in this paragraph.

25. The Chrome NESHAP requires the owner or operator of an affected source to conduct an initial performance test within 180 days after its initial startup date if the source is new and its initial startup date was after the effective date of the standard pursuant to 40 C.F.R. § 63.7 and § 63.343(b)(1).

26. The effective date of the Chrome NESHAP is January 25, 1995. 60 Fed. Reg. 4948 (January 25, 1995).

27. The Respondent's initial start up date was June 15, 1996.

28. The Respondent was required to conduct its initial performance test on or before December 12, 1996.

29. Respondent conducted its initial performance test on May 6, 1997.

30. The Respondent's failure to timely conduct its initial performance test violated 40 C.F.R. § 63.7(a)(2)(ii) and Section 112 of the Clean Air Act, 42 U.S.C. § 7412.

31. Respondent's violations of the Chrome NESHAP and the Act, subject Respondent to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count II

Failure to Timely Prepare and Submit an Operation and Maintenance Plan

32. Complainant incorporates paragraphs 1 through 31 of this Complaint, as if set forth in this paragraph.

33. Respondent is an "owner or operator" of a hard chromium electroplating tank and thus is subject to the work practices of 40 C.F.R. § 63.342(f).

34. Under 40 C.F.R. § 63.342(f)(3)(i) and 40 CFR § 63.343(a)(2), an owner or operator of a new or reconstructed affected source, such as a new hard chromium electroplating tank, with a startup date after January 25, 1995, is required to prepare an operation and maintenance plan by the initial start up

date.

35. Respondent is the owner or operator of a new hard chromium electroplating tank with a startup date after January 25, 1995 and thus is required to prepare an operation and maintenance plan by the initial startup date pursuant to 40 C.F.R. § 63.342(f)(3)(i) and 40 CFR § 63.343(a)(2).

36. Special condition 21 of PTI No. 161-94 required Respondent to prepare and submit an operation and maintenance plan by January 1, 1995. Special condition 19 of PTI No. 161-94A also required Respondent to prepare and submit an operation and maintenance plan.

37. On March 13, 1997, MDEQ inspected Respondent's facility and Respondent failed to have an operation and maintenance plan.

38. On March 24, 1997, MDEQ issued a letter of violation to Respondent, notifying Respondent that Respondent was violating its permit and the Chrome NESHAP by failing to have an operation and maintenance plan.

39. On April 4, 1997, the Respondent submitted a letter to MDEQ in which Respondent promised to submit an operation and maintenance plan by April 15, 1997.

40. On September 17, 1997, MDEQ issued a second letter to Respondent reminding Respondent that Respondent had still not submitted its operation and maintenance plan.

41. Respondent prepared and submitted an operation and maintenance plan, at the earliest, October 8, 1997.

42. Respondents' failure to timely prepare and submit an operation and maintenance plan violated 40 C.F.R. §

63.342(f)(3)(i), and of Section 112 of the Clean Air Act.

43. Respondent's violations of the Chrome NESHAP and the Act, as alleged in this count, subject the Respondent to the assessment of a civil penalty pursuant to Section 113(d) of the Act, 42 U.S.C. § 7413(d).

Count 3

Failure to Maintain Records

44. Complainant incorporates by reference paragraphs 1 through 43 of this complaint.

45. Pursuant to 40 C.F.R. § 63.346(b), the owner or operator of each affected source must maintain records for each source, including in relevant part:

- (1) inspection records for the add-on air pollution control device and monitoring equipment to document that the inspection and maintenance required by the work practice standards of 40 C.F.R. § 63.342(f) and Table 1 of 40 C.F.R. § 63.342 have taken place;
- (2) records of all maintenance performed on the affected source, the add-on air pollution control device, and monitoring equipment; and
- (3) test reports documenting results of all performance tests.

46. Pursuant to special condition 26 of PTI 161-94 and special condition 23 of PTI 161-94A, the Respondent had to maintain records of, among other things, daily and monthly

inspections, daily washdowns and any emission tests performed. Pursuant to special condition 23 of PTI 161-94A, the Respondent also had to maintain records of daily pressure drop readings.

47. Respondent had to begin maintaining the records referenced in paragraphs 45 and 46 above, on October 6, 1994, except for records of daily pressure drop readings, which it had to begin maintaining on or before August 22, 1997.

48. Respondent began maintaining the records referenced in paragraphs 45 and 46 above, on October 27, 1997, except for records of emission tests, which it began maintaining on May 6, 1997.

49. Respondent's failure to maintain required records violated 40 C.F.R. § 63.346(b), and of Section 112 of the Clean Air Act.

50. Respondent's violations of the Chrome NESHAP and the Act, as alleged in this count, subject the Respondent to the assessment of a civil penalty pursuant to Section 113(d) of this Act, 42 U.S.C. § 7413(d).

Proposed Civil Penalty

51. The Administrator must consider the factors specified in Section 113(e) of the Act when assessing an administrative penalty under Section 113(d). 42 U.S.C. § 7413(e).

52. Based upon an evaluation of the facts alleged in this complaint and the factors in Section 113(e) of the Act, Complainant proposes that the Administrator assess a civil penalty against Respondent of \$ 87,000. Complainant evaluated the facts and circumstances of this case with specific reference

to U.S. EPA's Clean Air Act Stationary Source Penalty Policy dated October 25, 1991 (penalty policy). Enclosed with this complaint is a copy of the penalty policy.

53. Complainant developed the proposed penalty based on the best information available to Complainant at this time. Complainant may adjust the proposed penalty if the Respondent establishes bona fide issues of ability to pay or other defenses relevant to the penalty's appropriateness.

Rules Governing This Proceeding

54. The "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits" (the Consolidated Rules) at 40 C.F.R. Part 22 govern this proceeding to assess a civil penalty. Enclosed with the complaint served on Respondent is a copy of the Consolidated Rules.

Filing and Service of Documents

55. Respondent must file with the Regional Hearing Clerk the original and one copy of each document Respondent intends as part of the record in this proceeding. The Regional Hearing Clerk's address is:

Regional Hearing Clerk (R-19J)
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

56. Respondent must serve a copy of each document filed in this proceeding on each party pursuant to Section 22.5 of the Consolidated Rules. Complainant has authorized Janet R. Carlson to receive any answer and subsequent legal documents that

Respondent serves in this proceeding. You may telephone Janet Carlson at (312)886-6059. Janet Carlson's address is:

Janet R. Carlson (C-14J)
Assistant Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Penalty Payment

57. Respondent may resolve this proceeding at any time by paying the proposed penalty by certified or cashier's check payable to "Treasurer, the United States of America", and by delivering the check to:

U.S. Environmental Protection Agency
Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent must include the case name and docket number on the check and in the letter transmitting the check. Respondent simultaneously must send copies of the check and transmittal letter to Janet R. Carlson and to:

Attn: Compliance Tracker, (AE-17J)
Air Enforcement and Compliance Assurance Branch
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

Opportunity to Request a Hearing

58. The Administrator must provide an opportunity to request a hearing to any person against whom the Administrator proposes to assess a penalty under Section 113(d)(2) of the Act, 42 U.S.C. § 7413(d)(2). Respondent has the right to request a hearing on any material fact alleged in the complaint, or on the appropriateness of the proposed penalty, or both. To request a

hearing, Respondent must specifically make the request in its answer, as discussed in paragraphs 59 through 64 below.

Answer

59. Respondent must file a written answer to this complaint if Respondent contests any material fact of the complaint; contends that the proposed penalty is inappropriate; or contends that it is entitled to judgment as a matter of law. To file an answer, Respondent must file the original written answer and one copy with the Regional Hearing Clerk at the address specified in paragraph 55, above, and must serve copies of the written answer on the other parties.

60. If Respondent chooses to file a written answer to the complaint, it must do so within 30 calendar days after receiving the complaint. In counting the 30-day time period, the date of receipt is not counted, but Saturdays, Sundays, and federal legal holidays are counted. If the 30-day time period expires on a Saturday, Sunday, or federal legal holiday, the time period extends to the next business day.

61. Respondent's written answer must clearly and directly admit, deny, or explain each of the factual allegations in the complaint; or must state clearly that Respondent has no knowledge of a particular factual allegation. Where Respondent states that it has no knowledge of a particular factual allegation, the allegation is deemed denied.

62. Respondent's failure to admit, deny, or explain any material factual allegation in the complaint constitutes an admission of the allegation.

63. Respondent's answer must also state:

- a. the circumstances or arguments which Respondent alleges constitute grounds of defense;
- b. the facts that Respondent disputes;
- c. the basis for opposing the proposed penalty; and
- d. whether Respondent requests a hearing as discussed in paragraph 58 above.

64. If Respondent does not file a written answer within 30 calendar days after receiving this complaint the Presiding Officer may issue a default order, after motion, under Section 22.17 of the Consolidated Rules. Default by Respondent constitutes an admission of all factual allegations in the complaint and a waiver of the right to contest the factual allegations. Respondent must pay any penalty assessed in a default order without further proceedings 30 days after the order becomes the final order of the Administrator of U.S. EPA under Section 22.27(c) of the Consolidated Rules.

Settlement Conference

65. Whether or not Respondent requests a hearing, Respondent may request an informal settlement conference to discuss the facts of this proceeding and to arrive at a settlement. To request an informal settlement conference, Respondent may contact Janet R. Carlson at the address or phone number specified in paragraph 56, above.

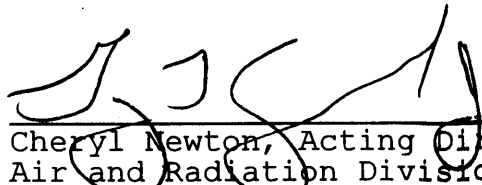
66. Respondent's request for an informal settlement conference does not extend the 30 calendar day period for filing a written answer to this complaint. Respondent may pursue simultaneously the informal settlement conference and the

adjudicatory hearing process. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. U.S. EPA, however, will not reduce the penalty simply because the parties hold an informal settlement conference.

Continuing Obligation to Comply

68. Neither the assessment nor payment of a civil penalty will affect Respondent's continuing obligation to comply with the Act and any other applicable Federal, State, or local law.

6/5/01
Date


FOR
Cheryl Newton, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-5- 2001-0 09

In the Matter of DMI Automotive, Inc.
Docket No.

CAA-5- 2001-0 09

CERTIFICATE OF SERVICE

I, Shanee Rucker, certify that I hand delivered the original and one copy of the Administrative Complaint, docket number [] to the Regional Hearing Clerk, Region 5, United States Environmental Protection Agency, and that I mailed correct copies of the Administrative Complaint, copies of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders and the Revocation, Termination or Suspension of Permits" at 40 C.F.R. Part 22, and copies of the penalty policy described in the Administrative Complaint by first-class, postage prepaid, certified mail, return receipt requested, to the Respondent and Respondent's Counsel by placing them in the custody of the United States Postal Service addressed as follows:

Dieter Schorman, President
DMI Automotive, Inc.
1200 Durant Drive
Howell, Michigan 48843

other cc's: Timothy McGarry, Enforcement Unit Supervisor
Michigan Department of Environmental Quality
Air Quality Division
P.O. Box 30260
Lansing, Michigan 48909

Lisa Scarpelli, District Supervisor
Southeast District
Michigan Department of Natural Resources
38980 Seven Mile Road
Livonia, Michigan 48152-1006

on the 6th day of June, 2001.

Shanee Rucker
Shanee Rucker
ARD/AECAB/AECAS (MI/WI)

CERTIFIED MAIL RECEIPT NUMBER: 7099 3400 0000 9581 3486